

BUSINESS REPORT

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

SENATE LOCAL GOVERNMENT COMMITTEE

Date: Monday, March 30, 2009
Place: Capitol

Time: 3:00 pm
Room: 405

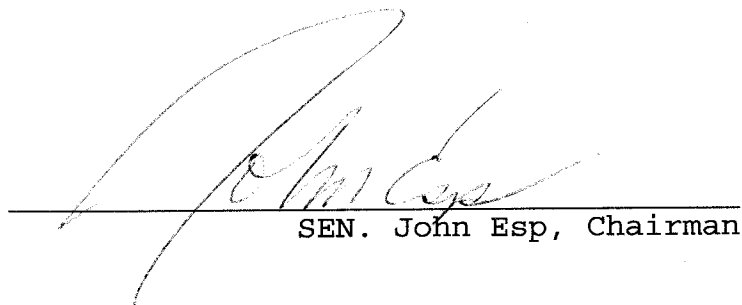
BILLS and RESOLUTIONS HEARD:

NONE

EXECUTIVE ACTION TAKEN:

HB449- Do Concur AS Amended
HB608- Do Concur AS Amended

COMMENTS:



SEN. John Esp, Chairman

MONTANA STATE SENATE
ROLL CALL
LOCAL GOVERNMENT
COMMITTEE

DATE: March 30, 2009

NAME	PRESENT	ABSENT/ EXCUSED
Chairman John Esp	✓	
Vice Chair Jeff Essmann	✓	
Senator Gregory Barkus	✓	
Senator Ron Erickson	✓	
Senator Steve Gallus	✓	
Senator Kim Gillan		✓
Senator Verdell Jackson	✓	
Senator Jesse Laslovich	✓	
Senator Bruce Tutvedt	✓	



SENATE STANDING COMMITTEE REPORT

March 30, 2009

Page 1 of 2

Mr. President:

We, your committee on **Local Government** recommend that **House Bill 449** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Senator John Esp, Chair

To be carried by Senator Steven Gallus

And, that such amendments read:

1. Title, lines 9 through 11.

Strike: "PROVIDING" on line 9 through "DISTRICT;" on line 11

2. Title, lines 17 and 18.

Strike: "REQUIRING" on line 17 through "SERVICES;" on line 18

3. Page 5, line 20 through page 6, line 12.

Strike: subsection (3) in its entirety

ReNUMBER: subsequent subsections

4. Page 6, line 17.

Strike: "(4)"

Insert: "(3)"

5. Page 6, line 20.

Strike: "(5)"

Insert: "(4)"

6. Page 12, line 3 through line 10.

Strike: sections 12 and 13 in their entirety

ReNUMBER: subsequent section

Committee Vote:

Yes 9, No 0

Fiscal Note Required ____

HB0449001SC00399.sdr

DR



SENATE STANDING COMMITTEE REPORT

March 31, 2009

Page 1 of 3

Mr. President:

We, your committee on **Local Government** recommend that **House Bill 608** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Senator John Esp, Chair

To be carried by Senator Jesse Laslovich

And, that such amendments read:

1. Title, lines 4 and 5.

Following: "LIEN" on line 4

Strike: remainder of line 4 through "PROCEEDS" on line 5

Strike: "SECTION 33-24-104,"

Insert: "SECTIONS 27-18-101, 27-18-202, 27-18-203, 27-18-204, AND 27-18-1502,"

2. Title, line 6.

Strike: "AND AN APPLICABILITY DATE"

3. Page 1, line 10 through line 25.

Strike: everything after the enacting clause

Insert: "Section 1. Section 27-18-101, MCA, is amended to read:

"27-18-101. Cases in which property may be attached. (1)

Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money where the contract:

(i) is not secured by any mortgage or lien upon real property; or

(ii) is originally secured and such security has, without any act of the plaintiff or the person to whom the security was given, become valueless; and

(b) an action based upon a statutory stockholders' liability; and

Committee Vote:

Yes 9, No 0

Fiscal Note Required __

(c) an action by a local government for the purpose of ensuring debris removal if it is determined that the underlying property is worth less than the cost of debris removal.

(2) Attachment may not issue if the defendant gives security to pay the judgment.

(3) For the purpose of this section, the guaranty of a loan in which the only condition precedent to the obligation of the guarantor is the default of the principal is an unconditional contract for the direct payment of money.""

Insert: "Section 2. Section 27-18-202, MCA, is amended to read:

"27-18-202. Plaintiff's affidavit. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone ~~in his~~ on the plaintiff's behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 27-18-101(1);

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking ~~with him~~ property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of ~~his~~ property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property ~~which that~~ would be subject to execution; or

(d) is likely to suffer liens or encumbrances on ~~his the~~ defendant's property ~~which that~~ would be subject to execution;

(4) a particular description and the actual value of the property to be attached;

(5) facts creating a reasonable basis for a local government belief that the underlying property is worth less than the cost of debris removal."

Insert: "Section 3. Section 27-18-203, MCA, is amended to read:

"27-18-203. Affidavit requirements when debt not yet due.

Actions may be commenced and writs of attachment issued upon any debt for the payment of money or specific property before the ~~same shall have debt has~~ become due, or upon a local government debris removal issue, when it ~~shall appear~~ appears by the affidavit, in addition to what is required in 27-18-202:

(1) that the defendant is leaving or is about to leave this state, taking ~~with him~~ property, ~~moneys~~ money, or other effects ~~which that~~ might be subjected to the payment of the debt, for the purpose of defrauding ~~his the~~ defendant's creditors or a local government; or

(2) that the defendant is disposing of ~~his~~ property or is about to dispose of ~~his~~ property, subject to execution, for the purpose of defrauding ~~his the~~ defendant's creditors or a local government.""

Insert: "Section 4. Section 27-18-204, MCA, is amended to read:

"27-18-204. Plaintiff's undertaking. Before issuing the

writ, the court must require a written undertaking on the part of the plaintiff, except a local government, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if ~~such the~~ amount ~~be is~~ \$1,000 or under or, in case the amount ~~so~~ claimed by plaintiff ~~shall exceed~~ exceeds \$1,000, then in a sum equal to ~~such that~~ amount. ~~In no case shall an~~ An undertaking may not be required exceeding ~~in amount~~ the sum of \$20,000. The condition of ~~such the~~ undertaking ~~shall must~~ be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages ~~he the defendant~~ may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking.""

Insert: "Section 5. Section 27-18-1502, MCA, is amended to read:

"27-18-1502. Plaintiff's undertaking. Before issuing the writ, the justice must require a written undertaking in due form on the part of the plaintiff, except a local government, with two or more sureties, in a sum of not less than \$50 or more than \$300, to the effect that if defendant recover judgment, the plaintiff will pay all costs that may be awarded to defendant and all damages ~~which he~~ that the defendant may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.""

Insert: "NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval."

- END -

AUTHORIZED SENATE COMMITTEE PROXY

I request to be excused from Local Govt Committee
because of other commitments. I desire to leave my proxy vote with:

J. Laslovich

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT AYE NO

HB449		
be amend.	✓	
be amend	✓	
dcaa	✓	
HB608		
be amend	✓	
dcaa	✓	

BILL/AMENDMENT AYE NO

Sen. Kim Sells

Date 3/30/09

(Signature)
K. Spilan